

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6969 of 1997

with

SPECIAL CIVIL APPLICATION NO. 3810 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

J S THAKOR

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 18/06/98

ORAL JUDGEMENT

#. These two petitions are filed to challenge the order passed in Reference No.547/92 on 19th September,1994 by the Labour Court of Godhara. As both the petitions are in respect of one and the same award, they are heard together and they are being disposed of by

this common judgment.

#. Special Civil Application No.6969/97 is filed by Shri J.S.Thakor who is working as Conductor in Lunavada Depot of Godhara Division of Gujarat State Road Transport Corporation. When he was working as conductor at Dahod Depot, on 2nd August,1991 on Dahod - Jesawada route, his bus was checked. At a time of said checking, it was found that there were 10 passengers in the bus without tickets and they had undertaken a journey for about 12 kms. In view of the said incident, the petitioner conductor was chargesheeted by alleging that he had not issued tickets to the said 10 passengers as he intended to recover amount of tickets from them at the time of getting down at their destination and to misappropriate the said amount by not issuing the tickets to them. In response to the said chargesheet, the petitioner conductor has given reply and he had contended that he had not issued the tickets as he was busy in issuing the tickets to others and maintaining the way bill and he never intended to misappropriate the amount. In the departmental inquiry, the explanation given by him was not accepted and by order dated 29th September,1992 he was dismissed from service.

#. Being aggrieved by the said decision of his employer, the petitioner had preferred an application before the authorities. As there could not be any reconciliation, a reference No.547 of 1992 was made before the Labour Court of Godhara.

#. Before the Labour Court, there was no dispute about the legality of inquiry. The only contention raised before the Labour Court was that even accepting the alleged misconduct on the part of the petitioner, the punishment of dismissal from service was harsh one and was not justified. The Labour Court on consideration the material before it as well as the previous conduct of the present petitioner passed an award of 19th August,1994 by ordering the reinstatement of the present petitioner without any backwages as well as stoppage of three increments permanently.

#. The petitioner has come before this court making grievance about the punishment awarded to him by the Labour Court but by contending that the punishment awarded is disproportionate to the misconduct and harsh one, whereas the Gujarat State Road Transport Corporation has preferred this Special Civil Application No.3801 of 1998 to challenge and dispute the order of the Labour Court in ordering the reinstatement of the conductor.

#. There is no dispute of the fact that when the petitioner's bus was checked on 2nd August, 1991, it was found that the present petitioner conductor Mr. J.S. Thakor had not issued tickets to 10 passengers but it is also very pertinent to mention here that it is not the claim of the Gujarat State Road Transport Corporation that he had received fares from the 10 passengers and had not issued tickets to them. Admittedly, no fare was paid by the passengers and no tickets were also issued. Therefore in these circumstances, at the most it could be said against the conductor is that he was negligent in his duty and he had made a preparation for alleged misappropriation. It could not be said that he had committed any act of misappropriation or any act of criminal breach of trust but at the most, it could be said in favour of the Corporation and against the conductor is that there was a preparation to misappropriate and to commit the criminal breach of trust. But merely because there was some negligence or preparation on the part of the conductor to commit such misappropriation, the action of dismissal from service could not be justified. No doubt from the previous record of the petitioner conductor, it is quite clear that on previous 7 (seven) occasions also on checking his bus, it was found that he had not issued tickets to some passengers. But it is very pertinent to note that on those occasions, the petitioner conductor was fined by awarding fine ranging from Rs.10 to Rs.200/-. This action of awarding fine clearly shows that the employer - Road Transport Corporation had never taken his similar previous conduct as a serious misconduct either as an attempt to commit misappropriation or misappropriation and to award him any heavy punishment. The awarding of fine shows that it is treated as a negligence in his duty. Therefore in these circumstances, the interference with the order of punishment by the Labour Court by exercising powers under Section-11-A of Industrial Disputes Act, 1947 could not be said to be not justified. Therefore, in the above circumstances, the writ petition filed by the Corporation to set aside the order of the Labour Court interfering with the order of the sentence, could not be allowed and the same deserves to be rejected.

#. At the cost of repetition, it must be said that there is no dispute before me as regards the commission of misconduct by the petitioner. As stated earlier, the misconduct which has been proved against the present petitioner, could be at the most, said to be a preparation for committing act of misappropriation and in

no case for such misconduct, the punishment of the dismissal from service after 17 years of service, will be justified. The Labour Court has passed an order on 19th August,1994 ordering reinstatement of the conductor without backwages. The petitioner conductor was dismissed on 29th September,1992, thus, he has been deprived of his earning for 2 years. The Labour Court has further ordered to stoppage of 3 increments permanently. The punishment of denial of nearly two years pay and further stoppage of three increments permanently is on harsher side in view of the proved misconduct of the conductor. In view of the misconduct proved against the conductor, the punishment of non payment of pay and allowance for two years with stoppage of three increments for a period of 5 years only instead of permanently will meet the ends of the justice. I, therefore, partly allow this Special Civil Application No.6969 of 1997 and modify the award passed by the Labour Court of Godhara by ordering that the three increments of the petitioner should be stopped for a period of only 5 years from the date of the order passed by the Godhra Labour Court. In view of the modification of the order of the Labour Court, the respondents to take necessary steps for fixing his pay. In the circumstances, I direct both the parties in both petitions to bear their respective costs.

(S. D. PANDIT, J.)

Dt.18-6-1998
